



University of Baltimore Law ScholarWorks@University of Baltimore School of Law

All Faculty Scholarship

Faculty Scholarship

3-2-2003

UB Viewpoint – Media Mergers, Antitrust Law and Consumer Choice

Robert H. Lande

University of Baltimore School of Law, rlande@ubalt.edu

Follow this and additional works at: http://scholarworks.law.ubalt.edu/all_fac



Part of the [Antitrust and Trade Regulation Commons](#), and the [Consumer Protection Law Commons](#)

Recommended Citation

UB Viewpoint – Media Mergers, Antitrust Law and Consumer Choice, Maryland Daily Record, March 2, 2003

This Editorial is brought to you for free and open access by the Faculty Scholarship at ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in All Faculty Scholarship by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact snolan@ubalt.edu.



UB Viewpoint - Media mergers, antitrust law and consumer choice

By: admin March 2, 2003

The long-rumored merger between ABC News and CNN apparently will not occur, at least for now. Ever since AOL was permitted to merge with Time Warner, there have been frequent rumors over which major media merger would occur next. There is even speculation that, within the next decade, most of our information may be supplied by perhaps three to five huge media conglomerates and a fringe of smaller firms. Today, before this occurs, is the time to ask two critical questions: Do we want to end up with this type of media oligopoly? If not, can the antitrust laws prevent it? We should distrust a media oligopoly because it would constitute an undue concentration of power in the hands of a few individuals. This power need not manifest itself in the form of higher prices for our daily newspapers. Rather, it could consist of a change in editorial viewpoints, a shift in the relative prominence of links to certain Web sites or a decision not to cover certain topics because they are not "newsworthy." All these problems can exist without any improper intent on the part of the media barons, because even if they try to be fair they necessarily will bring their own worldview to the task. Which brings us to the antitrust laws. At first it might seem that the antitrust laws are of little help in grappling with these media mergers. The antitrust laws are commonly understood as protecting price competition, and a relatively small number of firms — to greatly oversimplify, let's say three to five — are thought to be enough to keep a market price competitive. Three to five firms might indeed be sufficient to make relatively homogenous products, such as pig iron or aspirin, where we care so much about price competition. But three to five firms are insufficient to produce the diversity of viewpoints required by a democracy. Fortunately, antitrust is not exclusively about price. It is fundamentally about choice—about preserving for consumers a competitive range of price and non-price options in the marketplace. In most cases price competition is a reasonable proxy for choice competition. But not always. Communications media compete in large part by offering independent editorial viewpoints and an independent "gatekeeper" function. Three to five large media firms cannot effectively respond to a demand for "choice" competition by producing new media products because the new products inevitably will bear, to some extent, the stamp of their common owner. Competition in terms of editorial viewpoint or gatekeeping can be guaranteed only by ensuring that a media market contains a larger number of firms than may be required in other, more conventional markets. This would not mean a higher bar or a different rule for media mergers. It only would mean the application, to special circumstances, of the single universal rule of antitrust. And that rule is preserving for consumers a truly competitive range of choice in the marketplace.

Robert H. Lande is a venerable professor of law at the University of Baltimore School of Law.